

Service Date: October 28, 1985

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Application)	TRANSPORTATION DIVISION
of BURLINGTON NORTHERN RAILROAD)	
COMPANY to dualize agency opera-)	DOCKET NO. T-8689
tions at Harlem and Chinook,)	
Montana.)	ORDER NO. 5632

* * * * *

FINAL ORDER

* * * * *

APPEARANCES

FOR THE APPLICANT:

Charles C. Dearden, Regional Counsel, Burlington Northern
Railroad Company, 1003 First Northwestern Bank Center,
Billings, Montana 59101

FOR THE INTERVENOR CITY OF CHINOOK:

Stuart C. McKenzie, 411 Ohio, Chinook, Montana 59523

FOR THE COMMISSION:

Timothy R. Baker, Staff Attorney, 2701 Prospect Avenue,
Helena, Montana 59620

BEFORE:

DANNY OBERG, Commissioner & Hearing Examiner

BACKGROUND

1. The Burlington Northern Railroad Company (hereafter Applicant or BN) filed an application with the Montana Public Service Commission (Commission) on March 4, 1985 seeking authority to dualize agency operations at Harlem and Chinook, Montana.

2. Following issuance of proper notice, the Commission conducted a public hearing on September 5, 1985 in the Blaine County Library, Chinook, Montana.

3. All parties to this Docket have stipulated that a proposed order is unnecessary and that this Order shall be considered the Commission's Final Order.

SUMMARY OF TESTIMONY

Testimony of Applicant

4. Jim Witmeyer, BN Supervisor of Operations for the Great Falls Region, testified on behalf of Applicant concerning the general substance of BN's dualization proposal. It was Mr. Witmeyer's opinion that services would be unaffected by BN's proposal. Under that proposal, an agent would be based in Harlem.

Service to Chinook would be provided on Monday afternoons (1-4 p.m.), and also on an "as needed" basis. A toll-free number is available to contact the Great Falls office, where agent coordination would be conducted. Collect calls would also be accepted. The Great Falls office is open 24 hours. The schedule

of the local agent should be flexible enough to meet the needs of all shippers. Primarily, the duties of the local agent involve assisting the shipper with loading, bills of lading, etc.

5. Mr. Witmeyer further testified that R.L. Casteel (Harlem) and H.S. Bergman (Chinook) were the employees affected by the dualization. Both employees have protected status, so they will be paid full wages whether they are working or not. The extra agent would be moved to Havre where he would be used as a train operator. Eliminating the Chinook agent would cut operating costs.

6. Larry Hunter, BN Trainmaster for the affected area, testified that there is current train service both on through trains and out of Havre on an "as needed" basis, to Chinook and Harlem. In his opinion, the BN proposal would not alter train service.

7. Mr. Hunter further stated that the physical presence of the local agent is not significant to spotting cars. The train crews are able to perform this task on their own with help from the Havre office, and verbal instructions from the agent.

8. Mr. Hunter also testified that the Chinook depot would not be sold, but would be used by the local agent when he is there.

9. Paul Froelich, BN Analyst for Costs and Statistics, appeared and testified in support of the application. Mr. Froelich presented the following exhibit:

Exhibit No. 1: Accounting Exhibits for Proposal to Dualize
Agency Service at Harlem/Chinook, Montana.

10. Exhibit No. 1, pages 1-2, shows the following number of cars originating or terminating at Harlem: 1982 - 1207; 1983 - 1596; 1984 - 1032; first six months of 1985 - 394. Pages 5 and 6 of the same exhibit show the following net gains for the Harlem Agency, based on the "Burlington Northern formula": 1982 - \$147,323; 1983 - \$389,318; 1984 - \$289,645; first six months of 1985 - \$102,754.

11. Mr. Froelich stated that the primary purpose behind this application is BN's desire to increase employee productivity. Exhibit No. 1, page 4, contains the results of a time and motion study conducted by BN. This study analyzes the amount of "production time" attributable to the Harlem agent's performance of agency work during 1984. Based upon specified averages for performing specific tasks, the BN study concluded that the Harlem agent was productive 19 percent of his paid time.

12. Exhibit No. 1, pages 7-8, shows the following number of cars originating or terminating at Chinook: 1982 - 426; 1983 - 462; 1984 - 352; first six months of 1985 - 199. Pages 11-12 of the same exhibit show the following net gains for the Chinook Agency, based on the "Burlington Northern formula": 1982 - \$14,281; 1983 - \$78,148; 1984 - \$70,167; first six months of 1985 - \$37,034.

13. Exhibit No. 1, page 10, contains the results of a time and motion study conducted by BN. This study analyzes the amount of "productive time" attributable to the Chinook agent's performance of agency work during 1984. Based upon specific averages for performing specific tasks, the BN study concluded that the Chinook agent was productive 19 percent of his paid time.

14. Exhibit No. 1, page 13, contains the results of a time and motion study conducted by BN which analyzes the productive time of an agent under the proposed dualization. The study concluded that the Chinook/Harlem agent would be productive 20 percent of his paid time. Exhibit No. 1, page 14, shows the estimated annual savings resulting from the proposed dualization to be \$38,899. This cost savings is based upon the assumption that the extra employee will be placed in service elsewhere in the BN system. Mr. Froelich was skeptical that this projected annual savings would be passed along to customers through lower rates.

15. Mr. Froelich did not know what the average productivity (as defined by BN) is for single station agents in Montana, or systemwide. He stated that the productivity goal is around 85 percent, but was not aware of any stations on the BN system which had approached that level.

Testimony of Public Witnesses

16. James T. Mular, State Legislative Director of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, testified in opposition to the proposed dualization. Mr. Mular stated that, among other things, agents are responsible for demurrage, freight claims, and making sure cars are suitable for loading. He noted that making the shipper responsible for those tasks will affect shipper productivity, and complained that BN is asking its customers to become railroad employees.

17. Mr. Mular also testified that there was a surplus of protected employees in Havre who were not working and could fill the position opening there. Therefore, he reasoned that the cost savings figures presented by the Applicant were incorrect.

18. Mr. Mular further stated that it was the responsibility of the agent to oversee the "placarding" of hazardous materials that were transported.

19. Mr. Mular requested that the Commission take notice of Section 69-14-1001, MCA, and "the Green Book" (rules and regulations defining the duties and responsibilities of agents). Accordingly, the Commission takes such notice.

20. Mike Jendro, Manager of Montana Merchandising, Chinook elevator, appeared and testified in opposition to the application. He felt that if this application were granted BN would then move to eliminate Harlem as well. Briefly, Mr. Jendro explained the

layout of the Montana Merchandising elevator in Chinook. There are five tracks upon which cars have to be properly spotted. Loading actually takes place on three of the tracks. Quite often, spotting is done at night. The set up at the Chinook elevator is unique, and Mr. Jendro felt it was imperative to have an agent physically present. He further testified that there are switching complications which also require an agent's expertise and presence.

21. Mr. Jendro also stated that they load both 26 and 52 unit trains. The loading process usually takes 5-6 days, and at times there is loading occurring in both Chinook and Harlem at the same time. If the train units are not processed on time, then the elevator must pay "demurrage" to BN. Essentially, demurrage runs about \$20/day per unit (approximately \$1,000/day for a 52 unit train). Usually, to avoid demurrage, a unit must be moved within 24 hours of being spotted. Mr. Jendro stated that the physical presence of an agent was necessary to avoid demurrage, since the agent can immediately proceed to resolve any problems that arise with billing, loading, or spotting, or, in the event of a derailment (during which "demurrage" time continues to run). However, Mr. Jendro did state that as to many problems that arise, they could be resolved by phone contact with the agent. An important service provided by the agent is as an intermediary with BN.

22. Mr. Jendro testified that to order a train, he contacts the Great Falls Office. The order is then forwarded on to Billings. Mr. Jendro then contacts the local agent to notify him of the order and pool number. Single car orders are handled through the local agent, but this could be done by phone. Although a 24 hour phone number is provided by BN, there is not always service at that number.

Motion to Intervene by the City of Chinook

23. At this point in the proceedings, the City of Chinook moved to intervene as a party, and thus secure the right of cross-examination.

24. On behalf of the City's Motion, it was argued that the citizens of Chinook use the Applicant's services. In addition, the City had an interest, since hazardous materials were often transported by rail through the City limits. Finally, the intervention of the City of Chinook would help to facilitate a full record, and the City is made an "interested party" to the proceedings by virtue of its position as a county seat under Section 69-14-202, MCA.

25. The Applicant responded that the City is not a shipper, and that, under 49 CFR 172, it is the responsibility of the shipper to handle hazardous materials, not the agents.

26. The City of Chinook was allowed to intervene in the proceedings, and was granted the right of cross-examination.

Testimony of Shipper Witnesses, Continued

27. Mr. Jendro continued with his testimony. He testified that, as to grain shipments, Montana Merchandising is responsible for all of them. Mr. Jendro also stated that when there are spotting or other problems, the agent physically inspects the situation, noting car and track numbers. This quickens the process, and helps to prevent demurrage.

28. Rita Bryson, of Chinook, appeared and testified in opposition to the application. Her husband is a BN employee, and receives many phone calls regarding service when the local agent is not in town. Until the date of the hearing, she did not know that there was a toll-free number.

29. State Representative Francis Bardanouve, Harlem, appeared and testified in opposition to the application. Representative Bardanouve is elected from the district that encompasses Chinook. Representative Bardanouve stated that he also views the eventual elimination of both Harlem and Chinook as a potential problem in the future. He has served as a board member of the Harlem Cooperative for 33 years, and is a shipper of barley from Harlem.

30. Representative Bardanouve stated that he thought it was very important for the local agent to be physically present in the community. Aside from his important supervision responsibilities, the local agent serves as an advocate for the community, making sure that the needs of the local elevator are met. The agent also is a vital link between the shipper and the railroad, adding a human perspective.

31. Finally, Representative Bardenouve noted that the Chinook station is profitable. He also warned against giving too much weight to the shipping figures for 1985, since production levels are so low, and much of the grain shipped was produced last year.

32. State Representative Ray Peck, Havre, appeared and testified in opposition to the application. Representative Peck is elected from the Havre district (adjacent to the district of Representative Bardanouve). Representative Peck reminded the Commission that BN has a duty to serve the public. The Applicant has a monopoly along the hi-line. Despite the fact that the annual report reflects significant increases in profit levels, there have been no reductions in rates. From a public relations standpoint, the agent in Chinook is critical.

33. Bob Inman, Chinook, appeared and testified in opposition to the application. He is the Secretary of the Cooperative Grazing District. He testified that trailing cattle (as opposed to

trucking) is a common procedure. It is important to have a local agent who can give correct information regarding local train traffic, for purposes of organizing cattle crossings. He admitted that this could all be done by telephone, but emphasized that the physical presence of the local agent is reassuring.

34. William C. Harbolt, Chinook, appeared and testified in opposition to the application. He has been a resident of Chinook for 68 years. He stated that BN is only trying to save money, not serve the public. He is not a shipper, receiver, or affiliated with BN.

35. Ginger Standiford, Chinook, appeared and testified in opposition to the application. She spoke on behalf of the ranchers and farmers who live on the North Road. The local agent is an important personal link to BN. One gets very little satisfaction out of calling the Havre office.

36. Joe Inman, Chinook, appeared and testified in opposition to the application. Mr. Inman is from the Chinook Chamber of Commerce. He stated that if the application is granted, businesses will leave Chinook and future growth will be discouraged. The Applicant has a public service responsibility, and has been making a profit.

DISCUSSION, ANALYSIS AND FINDINGS

37. It has always been the position of this Commission that railroads should be allowed to practice economies when the benefits therefrom outweigh inconvenience and loss of service to the public.

In the past, this has resulted in Commission authorization to abandon or curtail station agency service. Accordingly, BN's application must be examined in terms of "public convenience and necessity." The application of this standard rests upon the facts of each case.

38. In addition, § 69-14-202, MCA, requires that railroads "maintain and staff facilities" in each town of not less than 1,000 population. In general, it has been the Commission's position that § 69-14-202, MCA, prohibits dualizations in such towns where specific hours of service are not established for the dualized agencies. In this case, BN has proposed specific hours of service for the Chinook agency, as well as service "as needed."

39. By the Applicant's own admission, the Chinook agency has been profitable for the past several years. This is also reflected in BN's exhibits. The sole purpose of this dualization is that employee productivity could be increased, resulting in substantial cost savings to BN. This in turn, leads to increased profits. In approving applications to close profitable stations in the past, the Commission has given significant weight to shipper testimony.

40. The testimony of Mike Jendro, Manager for Montana Merchandising, is particularly important. Montana Merchandising is the only grain shipper in Chinook. Mr. Jendro was able to identify specific problems which would result if the application were granted. He stated that it was important that the agent be physically present for spotting, and loading or unloading the cars. In addition, because of the complex switching system in Chinook, it was crucial for the agent to be present to prevent problems. Further, the presence of the agent serves to quicken the loading process, thus reducing the chance of demurrage. This is very important, especially with a 52-unit train. The physical presence of the agent keeps things moving, and quickens the resolution of problems. Finally, there are times when the spotting and loading process occurs in both Harlem and Chinook at the same time.

41. Representatives Bardanouve and Peck testified as to the importance of an intermediary between BN and the shipping public. Representative Bardanouve testified as to the importance of the advocacy role played by the local agent.

42. BN supports its application on the basis of productivity studies and calculations. The foundation for and development of BN's time and motion studies have been questioned in several Commission dockets involving similar issues. The Commission has concluded that these studies have some probative value, but are not entitled to great weight. Each case must be evaluated separately,

and the testimony regarding public convenience and necessity weighed accordingly.

43. According to BN's studies, the agents at Harlem and Chinook are each productive only 19 percent of their paid time, while the agent for the proposed dualized agency would be 20 percent productive. The Commission notes that BN has not provided any information indicating the average productivity of station agents in Montana or systemwide. Without such information, the Commission is at a loss to determine the level of productivity reasonably expectable, and whether the affected stations are below or above the median.

44. Weighing the benefits and burdens based on the facts in this case, the Commission finds that public convenience and necessity require that Applicant's dualization proposal be denied.

Considering the weight of the evidence presented, the Applicant has failed to meet its burden.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Montana Code Annotated, Title 69, Chapter 14.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter pursuant to Montana Code Annotated, Title 2, Chapter 4.

3. No set rule can be used to determine whether or not the public convenience and necessity require a given service to be performed. The facts in each case must be separately considered and from those facts the question is to be determined. See Chicago, M. St.P. and P.R.G. v. Board of Railroad Commissioners, 126 Mont. 568, 225 P.2d 346 (1953), cert. denied 346 U.S. 823.

4. Railroads must maintain and staff facilities in every city or town through which the railway passes, where the population of such city or town is not less than 1,000. § 69-14-202, MCA.

5. Public Convenience and Necessity require maintenance of the station agency at Chinook, Montana.

ORDER

NOW THEREFORE, IT IS ORDERED that the application of Burlington Northern Railroad Company in Docket No. T-8689 BE DENIED.

IT IS FURTHER ORDERED that this order be effective immediately and that a full, true, and correct copy of this order be mailed to all parties of record.

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this docket that were not ruled on are hereby denied.

DONE IN OPEN SESSION this 28th day of October, 1985 by a vote of 5 -0 .

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Trenna Scoffield
Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.